



# UNITED STATES PATENT AND TRADEMARK OFFICE

U/ /  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,010	02/15/2002	Philippe Maria Clotaire Margaron	273012011800	1251
7590	10/30/2006			EXAMINER FAY, ZOHREH A
Kawai Lau Morrison & Foerster LLP Suite 500 3811 Valley Centre Drive San Diego, CA 92130-2332			ART UNIT 1618	PAPER NUMBER
DATE MAILED: 10/30/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/081,010	MARGARON ET AL.
	Examiner Zohreh A. Fay	Art Unit 1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 August 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-41 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____.

Claims 1-41 are presented for examination.

The amendments and remarks filed on August 21, 2006 have been received and enter.

Claims 1-41 are rejected under 35 U.S.C. 112 first paragraph for the reasons set forth on pages 2-4 of the office action of May 17, 2006.

Claims 1-26 and 29-41 are rejected under 35 U.S.C. 103 (a) as being unpatentable over WO patent 98/34644 for the reasons set forth on pages 3-4 of the office action of May 17, 2006.

Applicant's arguments and remarks regarding the 112 first paragraph have been carefully considered, but are not deemed to be persuasive. Applicant in his remarks refers to the U.S. Patent 6,274,614 and argues that the word "preventing" was used in such patent. Applicant is reminded that a patent is a property and not precedence for other application. Furthermore, each application is allowed based on its own merits and the support that is provided in the specification. Applicant's specification fails to demonstrate that the inflammation completely abolished after using the claimed method of use. Applicant's arguments regarding the obviousness rejection have also been carefully considered, but are not deemed to be persuasive. Applicant in his remarks argues that the prior art does not teach that normal dose photodynamic therapy can cause inflammation that can be reduced or prevented by low dose PDT. Applicant is reminded that the rejection is an obviousness rejection and not anticipation. Therefore, it is not necessary for the reference to teach every element of the claimed invention in complete detail. Applicant's arguments

regarding claims 1 and 17 are not also well taken. The prior art clearly teaches that the photodynamic therapy can affects the tissues beyond the treated area, and can cause damage to such tissues as well. Thus, to use a low dose light to treat such tissues would have been obvious to a person skilled in the art.

Applicant's arguments regarding the rejection of claims 33-41 have been noted. Applicant is reminded that claim 33 is dependent on claim 17. However, there are no steps a, b, c and d in claim 17.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh A. Fay whose telephone number is (571) 272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

Art Unit: 1618

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Z.F

ZOHREH FAY  
PRIMARY EXAMINER  
GROUP 1600

